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**REMARKS/ARGUMENTS**

Claims 50, 51, 57, 58, and 61 have been revised to better tailor the claims to commercially contemplated embodiments of the invention and to reduce issues and advance prosecution of the instant application.

Support for the revision to claims 50, 51, 57 and 58 is provided at least at page 27, paragraph 0093, and page 28, paragraph 100, as well as independent claims 37 and 38.

Support for the revision to claim 61 is provided by the language of the claim as previously presented. No change in the actual or intended scope of the claim is believed to have occurred.

No new matter has been presented, and entry of the above revisions to the claims is respectfully requested.

**Telephonic Interview of December 16, 2004**

Applicants thank Examiners Kam and J. Weber for the courtesy of a telephonic interview on December 16, 2004 with the undersigned with Andrew Cubitt of X-Ceptor Therapeutics, Inc.

During the interview, the rejections under 35 U.S.C. § 112, second paragraph were discussed along with possible revisions to the claim language and the standards at MPEP 2173.02 (previously set forth in a January 17, 2003 USPTO memorandum by Stephen Kunin) to obviate the rejections. Applicants thank the Examiners for their helpful comments and the indications that claims 49 and 56, which utilize the term "partial agonist" are not indefinite because it is definite to the skilled artisan; and that at least the revisions to claim 61 would obviate its rejection. Applicants' representatives indicated that the removal of "such as" from claims 50 and 57 would be considered to expedite prosecution of the application depending on the number of other outstanding issues.

The rejections under 35 U.S.C. § 112, first paragraph were then discussed. Examiner Weber presented his view that the perception of an issue of non-enablement was

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supported by the last paragraph on page 2431 of the Stulnig et al. reference of record. The content of that paragraph is addressed in greater detail below.

During the interview, Applicants also pointed out that no undue emphasis should be placed on that single paragraph from the Stulnig et al. reference because the reference as a whole should be considered. Applicants further noted how the majority of the reference, including experimental results *and the observation of a lack of effect by LXR agonists in LXR $\alpha^{-/-}$   $\beta^{-/-}$  mice (which do not express either the  $\alpha$  or  $\beta$  form of LXR) were in complete agreement* with the instant invention and Applicants positions. Moreover, Applicants pointed out that the apparent acknowledgement of enablement for claims 53 and 60, directed to the use of N-(2,2,2-trifluoroethyl)-N-[4-(2,2,2-trifluoro-1-hydroxy-1-trifluoromethylethyl)-phenyl]-benzene sulfonamide, was only consistent with the similar effects seen by Stulnig et al. with 22(R)-hydroxycholesterol and 20(S)-hydroxycholesterol based on their relatedness as LXR agonists. Applicants also pointed out that the targeting of LXR via an agonist, as disclosed in the instant application, is the mechanism by which the invention is believed to function.

The Examiners indicated that the rejections based on allegations of non-enablement and an inadequate written description would be re-considered after submission of Applicants' above arguments in writing.

Issues under 35 U.S.C. §112, First Paragraph

Claims 37-52, 54-59 and 61 were rejected under 35 U.S.C. §112, first paragraph as allegedly not enabled such that a skilled artisan could make and/or use the invention commensurate in scope with the claims.

The statement of the rejection acknowledges that the specification enables the claims based on the use of "a specific LXR agonist, compound 1". However, the statement of the rejection asserts that the use of other LXR agonists is not enabled.

Applicants submitted the Stulnig et al. reference to demonstrate how a second group of artisans in the field, beyond the group in the Cao et al. reference, came to the same conclusion regarding the ability to use structurally different LXR agonists in relation to diabetes. Moreover, and as pointed out during the telephonic interview described above, Stulnig et al.'s

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observations with T0901317 (the same compound as "compound 1" of the instant invention) and two other structurally distinct LXR agonists (22(R)-hydroxycholesterol and 20(S)-hydroxycholesterol, hereafter 22(R)-HOC and 20(S)-HOC, respectively) supports Applicants' position that the use, in the instant invention, of any LXR agonist as known in the art is enabled because the commonality between "compound 1" and the other two agonists (22(R)-HOC and 20(S)-HOC) is their activity as LXR agonists. The requirement for activity as an LXR agonist is further emphasized by the fact that the 22(S)-hydroxycholesterol stereoisomer is inactive as an LXR agonist (see Figure 3 of Stulnig et al. and page 2430, left column, first full paragraph).

The relationship between the use of an LXR agonist to target LXR and the treatment of diabetes as described in the instant application is further supported by the results described by Stulnig et al. as "the lack of effect in  $LXR\alpha^{-/-}\beta^{-/-}$  mice [which underlines] the specificity of the LXR-mediated downregulation" of 11 $\beta$ -HSD-1 (11 $\beta$ -hydroxysteroid dehydrogenase-1), see (Stulnig et al., page 2430, left column, first full paragraph; page 2431, Figure 7, and left column, first paragraph). As noted by Stulnig et al., 11 $\beta$ -HSD-1 "appears to be causally linked to the development of type 2 diabetes and the metabolic syndrome" (see abstract).

Importantly, the above facts take away the notion of unpredictability in applying an LXR agonist to the treatment of diabetes as disclosed by the instant application because where is the unpredictability given the factual support that the absence of LXR expression prevents the LXR agonist from acting against diabetes? In the absence of unpredictability regarding the use of an LXR agonist against diabetes, the instant rejection cannot stand.

Additionally, the above relationship of using an LXR agonist to target LXR provides a mechanistic basis with which the scope of the instant claims is supported. As pointed out during the above described telephonic interview, the targeting of LXR via an agonist, as disclosed in the instant application, is the mechanism by which the invention is believed to function. Thus the Examiners' preference for a mechanism by which agonists of different structures would be able to function in the claimed invention is satisfied by the asserted mechanism of the instant application.

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Furthermore, the above, in combination with the standards set forth at MPEP 2164.04 and *In re Marzocchi*,<sup>1</sup> leads to the following conclusion: there is no objective basis to doubt that, as asserted by the instant application and encompassed by the pending claims, a skilled artisan in the field would find it reasonable to expect that LXR agonists beyond instant "compound 1" can be used to treat diabetes and the related conditions as described in the instant application. To argue against this conclusion would require speculation that instant "compound 1" and two other LXR agonists (22(R)-HOC and 20(S)-HOC), but not the 22(S)-hydroxycholesterol stereoisomer, act through LXR independent means. This speculation would be contrary to the results with instant "compound 1" described in the instant application and similar results seen by both Stulnig et al. and Cao et al.<sup>2</sup>

Therefore, it comes as no surprise that Stulnig et al. did not so speculate against the facts when they stated "[i]n conclusion, LXR ligands could mediate beneficial metabolic effects in insulin resistance syndromes including type 2 diabetes" (see abstract, last sentence). Similarly, Cao et al. concluded that use of "an LXR agonist leads to a significant reduction in hyperglycemia and an improvement in insulin sensitivity in preclinical models. These studies strongly implicate LXRs as alternative targets for intervention in diabetes mellitus." (see page 1136, left column, last paragraph).

In light of the above, and contrary to the position set forth in the instant rejection, Applicants are adamant that the pending claims are enabled for their entire scope because there is no objective reason to doubt that other LXR agonists known in the field at the time of the invention will function in the claimed methods. Applicants also point out that the above discussion based on post-filing references does not violate the requirement for enablement at the time of the invention (or the filing date of the instant application) because the references are used to demonstrate post-filing activities that are consistent with the disclosed invention and so demonstrate that the invention was enabled at the time of filing. Applicants note that the references were submitted because of repeated assertions doubting the ability, and thus enablement, to use additional LXR agonists as described in the instant application. The

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<sup>1</sup> 439 F.2d 220, 169 USPQ 367 (CCPA 1971).

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references continue to serve that purpose and so no improper reliance on post-filing enablement is present.

Applicants now turn to the Examiners' assertions, raised for the first time during the telephonic interview described above and based on the last paragraph on page 2341 of Stulnig et al., that the reference supports the determination of a lack of enablement even after the filing date of the instant application. The following analysis, which follows each of the four sentences of that paragraph (reproduced as follows) is provided.

"Beyond discovering an involvement of LXRs in regulation of endocrine function, these data indicate that a downregulation of 11 $\beta$ -HSD-1 expression is feasible by LXR agonist treatment. Of course, the physiological consequences of such a treatment in humans have yet to be explored. Due to the pronounced effect of LXRs on cholesterol efflux, particularly from macrophages (19-22), implicating a strong anti-atherogenic effect, such substances are currently developed for clinical application. Though further analyses on the pharmacological effects of such drugs must be awaited, a decrease in 11 $\beta$ -HSD-1 expression by LXR agonists could have beneficial effects on the metabolic control in patients with type 2 diabetes who are at high risk for developing cardiovascular disease."

*Sentence 1: "Beyond discovering an involvement of LXRs in regulation of endocrine function, these data indicate that a downregulation of 11 $\beta$ -HSD-1 expression is feasible by LXR agonist treatment."*

Applicants point out that this sentence draws a conclusion from the results from the data presented earlier in the Stulnig et al. reference. As evident on its face, the sentence supports Applicants' position because it concludes that LXR agonists can be used to downregulate 11 $\beta$ -HSD-1, and thus may be used in the treatment of diabetes. Therefore, the sentence does not support an assertion of non-enablement of the pending claims.

*Sentence 2: "Of course, the physiological consequences of such a treatment in humans have yet to be explored."*

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<sup>2</sup> J. Biol. Chem. 278(2):1131-1136, 2003, previously submitted.

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Applicants respectfully point out that *on its face*, this sentence simply notes that the “physiological consequences” of using LXR agonists to downregulate 11 $\beta$ -HSD-1, and thus treat diabetes, in humans have not yet been determined. This means that all the possible biological effects in humans from treatment with an LXR agonist in this manner have not yet been documented. This is akin to the recognition that human clinical trials are needed to “explore” the “physiological consequences” of using LXR agonists in humans. Thus the sentence is a far cry from the Examiners’ apparent assertion that it indicates the need for *de novo*, or undue, experimentation even after the filing date of the instant application, to treat humans, or other subjects, with an LXR agonist.

The Examiners’ assertion is also poorly supported because if the sentence demonstrates the need for undue experimentation *per se* to use a LXR agonist in general to downregulate 11 $\beta$ -HSD-1, and thus treat diabetes, then the sentence would be contrary to Sentence 1. Also, the fact that Sentence 2 is limited in scope to “humans” indicates that it refers to considerations like those that a human clinical trials are designed to address. Moreover, the Examiners’ interpretation of the sentence would also be contrary to Sentence 3 as discussed below because that sentence acknowledges that LXR agonists are “currently developed for clinical application.”

As the Examiner is no doubt aware, the standards for objective enablement are different from those of the Food and Drug Administration (FDA) and so the possibility that clinical trials may be needed before FDA approval of use in human is not a basis to support an assertion of non-enablement against the instant claims. See MPEP 2164.05 and the cases cited therein, particularly *Scott v. Finney*.<sup>3</sup>

*Sentence 3: “Due to the pronounced effect of LXRs on cholesterol efflux, particularly from macrophages (19-22), implicating a strong anti-atherogenic effect, such substances are currently developed for clinical application.”*

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<sup>3</sup> 34 F.3d 1058, 1063, 32 USPQ2d 1115, 1120 (Fed. Cir. 1994), “Testing for full safety and effectiveness of a prosthetic device is more properly left to the [FDA].”

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This sentence also does not support the assertion of non-enablement against the instant claims because it simply points out that LXR agonists are in clinical development for other medical indications. Thus the sentence would actually support Applicants' position that a great deal is known about LXR agonists such that they have advanced to the point of being considered for clinical use. Accordingly, no undue experimentation is need to apply them toward the treatment of diabetes. This sentence also suggests that the concerns with "dosages" to use with an LXR agonist are misplaced because while some experimentation might be needed to determine final dosages, that experimentation is far from undue because otherwise, all clinical trials would be undue experimentation *per se*.

*Sentence 4: "Though further analyses on the pharmacological effects of such drugs must be awaited, a decrease in 11 $\beta$ -HSD-1 expression by LXR agonists could have beneficial effects on the metabolic control in patients with type 2 diabetes who are at high risk for developing cardiovascular disease."*

This sentence also does not support the assertion of non-enablement against the instant claims because the first part "[t]hough further analyses on the pharmacological effects of such drugs must be awaited" is a generic statement that is true of every drug, including those that have received FDA approval.<sup>4</sup> Moreover, Applicants believe that the sentence merely points out that the actual "pharmacological" (i.e. molecular) effects of LXR agonists on various chemical and biological pathways of a subject treated with the agonists must be awaited. But Applicants again point out that the possibility of more to be learned about the molecular interactions and consequences of using LXR agonists does not support the notion that undue experimentation is needed to use them to treat diabetes.

Furthermore, Applicants note that the above is based on the view that "pharmacological effects" is narrower than "physiological consequences" as used in Sentence 2. If "pharmacological effects" is interpreted as including the physiological effects of a

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<sup>4</sup> Applicants point out that the recent discoveries regarding the pharmacological effects of Vioxx™ is an example of "further analysis" of pharmacological effect of a drug where there was no question as to its ability to treat arthritic pain. The discovery was simply that there may be undesirable side effects that were previously unappreciated. Such unappreciated considerations are not a reasonable basis to assert that the use of the drug to treat pain requires undue experimentation.

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pharmaceutical agent (i.e. drug) like an LXR agonist in a treated subject, then this portion of Sentence 4 merely reiterates part of the concept in Sentence 2, which does not support the allegation of non-enablement for the reasons provided above.

The second part of Sentence 4 states "a decrease in 11 $\beta$ -HSD-1 expression by LXR agonists could have beneficial effects on the metabolic control in patients with type 2 diabetes who are at high risk for developing cardiovascular disease." This is clearly a hopeful if not positive indication that supports Applicants' position regarding the lack of undue experimentation to use an LXR agonist in the treatment of type 2 diabetes.

In light of the above, Applicants respectfully submit that contrary to the Examiners' position presented during the telephonic interview, the paragraph does not support the allegation of non-enablement for the scope of the pending claims. Moreover, the Examiners' interpretation is contrary to other statements in Stulnig et al., such as "[i]n conclusion, LXR ligands could mediate beneficial metabolic effects in insulin resistance syndromes including type 2 diabetes" (see abstract, last sentence).

Additionally, the focus on a single paragraph within the entirety of the teachings of Stulnig et al. without appropriate weight given to the remainder is improper as set forth at MPEP 2164.04 and 2164.05 and the cases cited therein, which mandate a consideration of the evidence "as a whole" rather than just a portion thereof. As noted during the telephonic interview described above, Applicants believe the focus of the inquiry on Stulnig et al. should be how the disclosure would be interpreted by the skilled artisan. While it is uncertain as to whether Stulnig et al. as authors of the reference are "skilled artisans" as meant under U.S. patent law, it is certain that the skilled artisan would be one provided with the teachings of *both* Stulnig et al. and Cao et al. (previously cited and briefly described above).

Cao et al. describe work based on observations made with T0901317, which is instant "compound 1" of the invention. Thus they used one of the compounds discussed by Stulnig et al. Despite this commonality between the work of Cao et al. and Stulnig et al., it is clear that Cao et al. have no statements that might be interpreted as casting doubt on the ability to use an LXR agonist to treat diabetes. As noted above, Cao et al. conclude with the following:



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“an LXR agonist leads to a significant reduction in hyperglycemia and an improvement in insulin sensitivity in preclinical models. These studies strongly implicate LXRs as alternative targets for intervention in diabetes mellitus.” (see page 1136, left column, last paragraph).

This is the same conclusion which underlies the instantly claimed invention and which was asserted with the filing of the instant application. Accordingly, the “evidence as a whole”, must include how the skilled person would interpret the teachings of Stulnig et al. in its entirety along with Cao et al., with its lack of statements like those in the above paragraph from Stulnig et al.

Therefore, Applicants respectfully submit that proper consideration of the “evidence as a whole”, which would include both references as viewed by a skilled artisan, shows no support for the notion that undue experimentation is needed to practice the claimed invention. Accordingly, Applicants believe that the instant rejection should be withdrawn for the above reasons because no *prima facie* case of non-enablement is present.

However, and to provide a complete response, Applicants traverse the instant rejection and point out that the statement of the rejection appears to

- 1) improperly doubt the objective truth of the statements in the specification supporting the instant claims;
- 2) place undue focus on the allegation that determination of dosages to use constitutes undue experimentation; and
- 3) misplace focus on the identities of additional LXR agonists.

With respect to 1), Applicants again point out the legal standard (as noted above) that statements must be taken as supportive of enablement unless there are objective reasons to doubt them. Therefore, the assertion in the instant statement of the rejection that “[t]he specification, however, only discloses cursory conclusions without data supporting the findings” (see page 3, lines 25-26 of the Office Action) improperly doubts the objective truth of the statement, which is that LXR agonists may be used to treat diabetes. The allegation of “without data” ignores the working example using instant “compound 1” and more importantly *the*

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*support it provides to the use of other LXR agonists in treating diabetes.* Doubt is proper if there is evidence that other LXR agonists will not work as claimed in the instant application. But of course, no such evidence has been provided, and so only improper doubt has been raised to support the allegation of non-enablement.

The improper tendency to doubt the objective truth of Applicants' statements is also seen in the sentence bridging pages 3 and 4 of the Office Action: "[t]here are no indicia that the present application enables the full scope in view of a method of treating type II diabetes or related disorders by administering an LXR agonist." This conclusory statement improperly requires that "indicia" be present in order to support enablement. This turns the inquiry, which is the presumption of enablement unless there is a *prima facie* case of non-enablement, on its head. As noted above and discussed further below, there is no indication of unpredictability in the use of an LXR agonist to treat diabetes because of the evidence that the targeting of LXR with an agonist is the mechanism underlying the invention.

With respect to 2), Applicants note the repeated allegation that determination of "the dosage" to use with additional LXR agonists supports the notion of undue experimentation (see especially pages 5-6 of the instant Office Action). For example, and with respect to Applicants' arguments in the previous response filed July 9, 2004 (which are hereby incorporated and reasserted) concerning the routine and repetitive nature of determining dosages based in part on the evidence in Figure 15 and the working Examples, the instant rejection states that the

"Examiner disagrees because it requires further research to identify suitable dosage, which is undue experimentation. Applicants provides an example that a given LXR agonist, such as 22(R)-hydroxycholesterol or 20(S)-hydroxycholesterol, at a give dosage can be administered and compared to a control to observe the effects on plasma glucose levels over time..., however, the determination of this given dose requires further experimentation since 22(R)-hydroxycholesterol is structurally different from compound 1, the effect of 22(R)-hydroxycholesterol cannot be predicted using the dose response curve of compound 1." (see pages 9-10 of the instant Office Action).

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Clearly, the first sentence is in error because it equates any "further research" with "undue experimentation". The second sentence is in error to the extent that "further experimentation" is equated with "undue experimentation". The second sentence is also in error because it misses Applicants' point that the dosage can be determined in the manner shown for compound 1 without undue experimentation. There was no assertion that the curve for compound 1 in Figure 15 predicts the curve for 22(R)-hydroxycholesterol.

As for 3), Applicants respectfully point out that no basis has been provided to assert that the absence of a list of LXR agonists supports the allegation of non-enablement. The instant rejection repeatedly asserts the alleged need for "identities of various LXR agonists" (see page 5, line 11, page 6, line 25, page 8, lines 28-30, and page 9, lines 25-27, of the instant Office Action), but no rationale is given for why the absence of such particular identities is needed in light of the clear assertion in the application that *any* LXR agonist works in the invention. Applicants respectfully point out that this assertion is also being improperly doubted, despite the mechanistic nature of the assertion that it is the targeting of LXR by an agonist which supports the scope of the claims. The need for a rationale is even greater in light of the fact that, as repeatedly pointed out by Applicants without contradiction from the Examiners, LXR agonists are known in the art. Accordingly, Applicants submit that no support for non-enablement is provided by the alleged need for LXR agonist identities.

Otherwise, the instant rejection contains other improper positions, such as the apparent requirement for "specific guidance on identities of various LXR agonists, their treating conditions and effects in the treatment of type 2 diabetes and related disorders to be considered enabling for variants"<sup>5</sup> (see page 5, lines 10-13). Applicants submit that this level of "specific guidance" requires much more detail than that required under U.S. law to preclude undue experimentation. Accordingly, the asserted requirement cannot be the correct one to avoid the alleged non-enablement.

Another improper assertion in the instant rejection states "the specification does not describe a genus of variants of LXR agonists in the method of treating type II diabetes or

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related disorders, thus the claimed method with a functional limitation is not supported by the specification under 35 U.S.C. 112, first paragraph.” (see page 9, first full paragraph of the instant Office Action). Applicants respectfully point out that the assertion of the genus of LXR agonists for use in the claimed invention is clearly set out in the instant application. Simply put, it is not required that all members of a genus be listed to support the genus, especially when the genus, like the case of LXR agonists, is known in the art. Would a new method of transferring aqueous solutions require the disclosure of identities of every aqueous solution? Moreover, Applicants respectfully request clarification of support for the requirement for “description of a genus” to support functional language. Applicants note that MPEP 2173.05(g) does not support this alleged requirement.

Last, the instant rejection appears to be based in part on an allegation that *in vivo* data is needed to support enablement of the claims (see page 9, last paragraph of the instant Office Action). As set forth at MPEP 2164.02 and cases cited therein, mere lack of *in vivo* data is not sufficient to support an allegation of non-enablement.

In light of the foregoing, Applicants strongly submit that no *prima facie* case of undue experimentation, and thus lack of enablement, exists with respect to the rejected claims. Accordingly, this rejection should be withdrawn.

Claims 37-52, 54-59 and 61 were rejected under 35 U.S.C. §112, first paragraph as allegedly not supported by an adequate written description. Applicants have carefully reviewed this rejection and respectfully traverse because no *prima facie* case of an inadequate written description has been presented.

The instant rejection is apparently focused on the lack of disclosure of “a genus of variants of LXR agonists” for use in the instant invention. Thus there is the allegation that “[t]he skilled artisan cannot envision all the contemplated compounds for variants of LXR agonists. The detailed structure of variants of LXR agonists must be taught, therefore conception cannot be not achieved until reduction to practice has occurred, regardless of the complexity or

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<sup>5</sup> Applicants have interpreted “variants” as meaning other LXR agonists. Clarification of any other intended

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simplicity of the method of preparation.” (see page 11, last paragraph of the instant Office Action).

Applicants respectfully submit that this rejection is misplaced because as repeatedly explained by Applicants without contradiction by the Examiner, the genus of LXR agonists is known to the skilled artisan. Therefore, the simple statement of using an LXR agonist in the instant invention is sufficient to adequately describe the invention and place its full scope in the hands of the skilled person. Contrary to the face of the above quote, the claims are not directed to unknown “variants of LXR agonists” or new LXR agonists of unknown structure that allegedly must be “prepared” and described before they can be claimed.

The invention is clearly based on the conception of using a genus of compounds, LXR agonists, as known in the art, in the manners described in the instant application. As set forth at MPEP 2163, “[i]nformation which is well known in the art need not be described in detail in the specification. See, e.g., *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986).”

Because the instant rejection appears to be based on a requirement for description of “information well known in the art”, and thus contrary to MPEP 2163, Applicants respectfully submit that no *prima facie* case has been presented and this rejection may be properly withdrawn.

Issues under 35 U.S.C. §112, Second Paragraph

Claims 49 and 56 were rejected under 35 U.S.C. §112, second paragraph as allegedly indefinite for reciting “partial agonist”. As described above with respect to the telephonic interview, Applicants are of the understanding that this rejection has been obviated upon further review of the claims by the Examiners. Accordingly, this rejection will be withdrawn, and Applicants look forward to early indication to that effect.

Claims 50-52 and 57-59 were rejected under 35 U.S.C. §112, second paragraph as allegedly indefinite for reciting “an active agent”. While Applicants believe that no *prima facie*

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meaning is respectfully requested.

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case of indefiniteness has been presented, claims 50 and 57 have been revised as explained above based on the independent claims from which they depend and the specification as noted. Applicants respectfully submit that this rejection has been obviated and request that it be withdrawn.

Claims 50-52 and 57-59 were rejected under 35 U.S.C. §112, second paragraph as allegedly indefinite for reciting "such as". While Applicants believe that no *prima facie* case of indefiniteness has been presented in light of MPEP 21673.02, claims 50 and 57 have been revised as explained above to reduce the number of issues in the instant application and so advance prosecution. Applicants respectfully submit that this rejection has been obviated and request that it be withdrawn.

Claim 61 was rejected under 35 U.S.C. §112, second paragraph as allegedly indefinite for language in the preamble. As described above with respect to the telephonic interview, Applicants are of the understanding that this rejection has been obviated in light of the above revisions to the claim, which do not alter the scope thereof. Accordingly, this rejection will be withdrawn, and Applicants look forward to early indication to that effect.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and urge passage of the application to issue. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6151.

Respectfully submitted,



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